IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 5820 OF 1998.

1. M/s.Jindal Super Dal Mills,
   a partnership firm, registered
   under the Partnership Act and
   having their office at C-29,
   Lawrence Road, New Delhi 110 035.

2. M/s.National Insurance Co.Ltd.,
   a body corporate, subsidiary of
   General Insurance Corporation of
   India having their registered
   office at 3, Middleton Street,
   Calcutta 700 071, and one of their
   Delhi D.O.No.XIX, at Laxmi Tower,
   Nainiwala Bagh, Azadpur Commercial
   Complex, Delhi 110 033, and their
   Mumbai D.O.No.XII at Sheel Chamber
   3rd floor, 10, Cawasji Patel
   Street, Mumbai 400 023. ... Plaintiffs.

Versus.

M/s.Sany Shipping Pte.Ltd.,
a foreign Shipping Company,
incorporated in Singapore and having
their head office at 101, Cecil Street,
24-09 Tang Eng Building, Singapore
069 533, and carry on their business
in Mumbai through their Agents
M/s.Galaxy Multimodel Systems Pvt.Ltd.
Room No.20/21, Hansraj Damodar Trust
Building, 2nd floor, 12/14, Goa Street,
Ballard Estate, Mumbai 400 038. ... Defendant.

Shri V.S.Amin i/by M/s.V.S.Amin & Co.for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 31st July, 2007.

ORAL JUDGMENT.:

1. This suit is listed on the board under the caption of "Undefended suits for exparte decree". The

learned Counsel for the Plaintiffs has tendered on record an affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The affidavit is marked "X" for identification and is taken on record. The Plaintiffs have also tendered the original documents along with a list. The original documents along with the list are marked "Y" (collectively) for identification and the same are taken on record.

2. The 1st Plaintiff is a registered partnership firm and the 2nd Plaintiff is an Insurance company. The Defendant is a shipping company incorporated in Singapore and having management, control, possession and coverage of m.v. "MARTINA" and carry on business of carriers of goods by sea for consideration. According to the Plaintiffs, the Defendant is carrying on its business in Mumbai through its agents M/s.Galaxy Multimodal Systems Pvt.Ltd. having its office at Mumbai.

3. A shipper M/s.Agrocorp International Pte.Ltd.. having its office at Singapore sold in favour of the 1st Plaintiff 10,000 bags of Green Mung Beans for a total sum of US $198,432.00. According to the Plaintiffs, the said 10,000 bags were entrusted to the Defendant as owners and/or charterers of steamship vessel

m.v."Martina" for its carriage and safe delivery from the Port of Yangon to Mumbai. The Defendant issued bill of lading dated 1st January 1998 evidencing that 10,000 bags of Green Mung Beans were shipped in sound condition for its safe and timely delivery at Mumbai Port. According to the Plaintiff the said bill of lading was originally endorsed by the Shipper in favour of Indian Bank, Singapore Branch, who in turn endorsed it in favour of the State Bank of Mysore, Delhi and the State Bank of Mysore ultimately endorsed the said bill of lading in favour of the 1st Plaintiff for the value received. According to the Plaintiffs, by reason of such endorsement, the first Plaintiff became the owner of the said goods.

4. According to the Plaintiffs the suppliers sent their invoice dated 1st January 1998 to the 1st Plaintiff in respect of 10000 bags of green mung beans and the same were presented through the State Bank of Mysore, Delhi. The 1st Plaintiff accordingly made payment of the amount due under the said invoice against negotiation of the said invoice and bill of lading to the said State Bank of Mysore, and obtained the title to the aforesaid consignment.

5. After the consignment arrived at Mumbai Port, M/s.V.Arjoon, Mumbai, the clearing agents of the 1st

Plaintiff found that most of the bags were landed in torn/slack condition and were mixed with dirt and other foreign matter. The Bombay Port Trust authorities issued remark list certificate dated 5th March 1998 to the Clearing Agents of the 1st Plaintiff stating that out of 10,000 bags, 2018 bags landed in torn and slack condition. Thereafter on the request of the 1st Plaintiff's Clearing Agents, a joint survey of the torn and slack condition of the bags was carried out by M/s.Cargo Control & Services Corporation, Mumbai on behalf of the Defendants. The survey report dated 16th March 1998 found shortage/damage in 820 bags. The 1st Plaintiff by its letter dated 24th March 1998 addressed to the Defendant's agents in Mumbai lodged a valid monetary claim for Rs.2,37,703/- on account of the loss suffered by the Plaintiffs. The first Plaintiff by letters dated 24th March 1998 lodged a claim with the Defendant's agent. The 1st Plaintiff thereafter through their Advocate's letter dated 17th November 1998 once again called upon to the Defendant's agents to settle the said loss of Rs.2,37,703/-. Though the claim was duly received by the Agents of the Defendant, there was no response from the Defendants.

6. The 1st Plaintiff had insured the aforesaid consignment of 10,000 bags with the 2nd Plaintiff for transit risk from the Port of loading to Mumbai vide

Insurance Policy dated 5th January 1998. After the 1st Plaintiff lodged the claim with the 2nd Plaintiff, the 2nd Plaintiff paid the sum of Rs.2,37,703/- to the 1st Plaintiff being the loss suffered by the 1st Plaintiff. Thereafter on 14th September 1998, the 1st Plaintiff executed in favour of the 2nd Plaintiff a letter of subrogation as well as a special power of attorney authorising the 2nd Plaintiff to recover the amount of loss suffered by the 1st Plaintiff. Accordingly the present suit has been filed for recovery of the sum of Rs.2,37,703/- with further interest at the rate of 18% per annum.

7. The Plaintiffs have placed on record the following original documents; viz. (i) Invoice dated 1st January 1998; (ii) bill of lading dated 1st January 1998 issued by the Defendant; (iii) Remark list certificate dated 5th March 1998; (iv) Survey report dated 16th March 1998 of M/s.Cargo Control and Services Corporation, Mumbai; (v) Letter of subrogation dated 14th September 1998 executed by the 1st Plaintiff in favour of the 2nd Plaintiff; and (vi) Special power of attorney of the same date executed by the 1st Plaintiff in favour of the 2nd Plaintiff. The said documents have been duly proved by the affidavit in lieu of evidence of Mrs.Maithili Mohan Kulkarni, Assistant Manager of the 2nd Plaintiff. The claim in the suit is also proved by

the said affidavit.

8. In the circumstances, a case is made out for passing a decree in favour of the Plaintiffs. Considering the facts and circumstances and in the absence of any stipulation in the contract regarding payment of interest, the further interest will have to be fixed at 9% per annum.

9. Hence there will be a decree in terms of prayer clauses (a) and (b) with a modification that the interest at the rate of 9% per annum will be payable from the date of filing of the suit till realisation or payment.

10. The Plaintiffs will be entitled to refund of Court fees, if any, in accordance with the rules.

11. Certified copy is expedited.

Judge.